

1 Scott Alan Burroughs (SBN 235718)  
scott@donigerlawfirm.com  
2 Trevor W. Barrett (SBN 287174)  
tbarrett@donigerlawfirm.com  
3 Frank R. Trechsel (SBN 312199)  
ftrechsel@donigerlawfirm.com  
4 DONIGER / BURROUGHS  
5 603 Rose Avenue  
6 Venice, California 90291  
7 Telephone: (310) 590-1820  
Attorneys for Plaintiff  
8

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11

12 Dr. Elliot McGucken, an individual,  
13 Plaintiff,  
14  
15 v.  
16 Pepperdine University, a California  
17 nonprofit corporation; and Does 1-10,  
inclusive,  
18  
19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT
3. VIOLATIONS OF THE DIGITAL MILLENNIUM COPYRIGHT ACT (17 U.S.C. §1202)

Jury Trial Demanded

1 Plaintiff, Dr. Elliot McGucken (“McGucken”), by and through his undersigned  
2 attorneys, hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101  
5 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and  
7 1338 (a)-(b).

8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and  
9 1400(a) in that this is the judicial district in which a substantial part of the acts and  
10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Plaintiff McGucken is an individual residing in Los Angeles, California.

13 5. McGucken is informed and believes and thereon alleges that Defendant  
14 Pepperdine University (“Pepperdine”) is a California corporation doing business in  
15 and with the Los Angeles County, including through its principal place of business at  
16 24255 Pacific Coast Highway, Malibu, California 90263.

17 6. On information and belief, McGucken alleges that Defendants DOES 1  
18 through 10 (collectively, “DOE Defendants”) (altogether with Pepperdine,  
19 “Defendants”) are other parties not yet identified who have infringed McGucken’s  
20 copyrights, have contributed to the infringement of McGucken’s copyrights, or have  
21 engaged in one or more of the wrongful practices alleged herein. The true names,  
22 whether corporate, individual or otherwise, of DOE Defendants are presently  
23 unknown to McGucken, who therefore sues said DOE Defendants by such fictitious  
24 names, and will seek leave to amend this Complaint to show their true names and  
25 capacities when same have been ascertained.

26 7. On information and belief, McGucken alleges that at all times relevant  
27 hereto each of the Defendants was the agent, affiliate, officer, director, manager,  
28

1 principal, alter-ego, and/or employee of the remaining Defendants and was at all  
2 times acting within the scope of such agency, affiliation, alter-ego relationship and/or  
3 employment; and actively participated in or subsequently ratified and adopted, or  
4 both, each and all of the acts or conduct alleged, with full knowledge of all the facts  
5 and circumstances, including, but not limited to, full knowledge of each and every  
6 violation of McGucken's rights and the damages to McGucken proximately caused  
7 thereby.

### 8 **CLAIMS RELATED TO MCGUCKEN'S PHOTOGRAPH**

9 8. McGucken is an acclaimed photographer who created and owns the  
10 original photograph depicted in **Exhibit A** attached hereto ("Subject Photograph").

11 9. McGucken is the sole and exclusive owner of all rights, title, interests,  
12 and privileges in and to the Subject Photograph.

13 10. Prior to the acts complained of herein, McGucken published and widely  
14 publicly displayed and disseminated the Subject Photograph including without  
15 limitation on McGucken's website *www.mcgucken.com*.

16 11. Following McGucken dissemination and display of the Subject  
17 Photograph, Defendants, and each of them copied, reproduced, displayed, distributed,  
18 created derivative works, and/or otherwise used the Subject Photograph without  
19 license, authorization, or consent, including by using the Subject Photograph as the  
20 cover for the publication "The Orange Book: 2021 Academic Planning Guide"  
21 ("Infringing Use") which was created, published, and distributed by the Pepperdine  
22 Caruso School of Law, a division of Pepperdine. The Infringing Use was made  
23 widely and publicly available at *community.pepperdine.edu*, which is owned and  
24 operated by Pepperdine, and is actively distributed and made available by Pepperdine  
25 to current and potential students. True and correct screen captures of the Infringing  
26 Use, and its accompanying URL, are included in **Exhibit B** attached hereto.



1 18. On information and belief, McGucken alleges that Defendants, and each  
2 of them, infringed McGucken's copyrights by creating infringing derivative works  
3 from the Subject Photograph and publishing same to the public.

4 19. Due to Defendants', and each of their, acts of infringement, McGucken  
5 has suffered general and special damages in an amount to be established at trial.

6 20. Due to Defendants', and each of their, acts of copyright infringement as  
7 alleged herein, Defendants, and each of them, have obtained direct and indirect  
8 profits they would not otherwise have realized but for their infringement of  
9 McGucken's rights in the Subject Photograph. As such, McGucken is entitled to  
10 disgorgement of Defendants' profits directly and indirectly attributable to  
11 Defendants' infringement of McGucken's rights in the Subject Photograph in an  
12 amount to be established at trial.

13 21. On information and belief, McGucken alleges that Defendants, and each  
14 of them, have committed acts of copyright infringement, as alleged above, which  
15 were willful, intentional and malicious, which further subjects Defendants, and each  
16 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright  
17 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from  
18 asserting certain equitable and other defenses.

19 **SECOND CLAIM FOR RELIEF**

20 **(For Vicarious and/or Contributory Copyright Infringement – Against all**  
21 **Defendants, and Each)**

22 22. McGucken repeats, re-alleges, and incorporates herein by reference as  
23 though fully set forth, the allegations contained in the preceding paragraphs of this  
24 Complaint.

25 23. On information and belief, McGucken alleges that Defendants knowingly  
26 induced, participated in, aided and abetted in and profited from the illegal  
27 reproduction and distribution of the Subject Photograph as alleged hereinabove. Such  
28

1 conduct included, without limitation, publishing photographs obtained from third  
2 parties that Defendants knew, or should have known, were not authorized to be  
3 published by Defendants.

4 24. On information and belief, McGucken alleges that Defendants, and each  
5 of them, are vicariously liable for the infringement alleged herein because they had  
6 the right and ability to supervise the infringing conduct and because they had a direct  
7 financial interest in the infringing conduct. Specifically, Defendants, and each of  
8 them, profited in connection with the Infringing Use, and were able to supervise the  
9 distribution, broadcast, and publication of the Infringing Use.

10 25. By reason of the Defendants', and each of their, acts of contributory and  
11 vicarious infringement as alleged above, McGucken has suffered general and special  
12 damages in an amount to be established at trial.

13 26. Due to Defendants' acts of copyright infringement as alleged herein,  
14 Defendants, and each of them, have obtained direct and indirect profits they would  
15 not otherwise have realized but for their infringement of McGucken's rights in the  
16 Subject Photograph. As such, McGucken is entitled to disgorgement of Defendants'  
17 profits directly and indirectly attributable to Defendants' infringement of  
18 McGucken's rights in the Subject Photograph, in an amount to be established at trial.

19 27. On information and belief, McGucken alleges that Defendants, and each  
20 of them, have committed acts of copyright infringement, as alleged above, which  
21 were willful, intentional and malicious, which further subjects Defendants, and each  
22 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright  
23 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from  
24 asserting certain equitable and other defenses.

25 **THIRD CLAIM FOR RELIEF**

26 **(For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 –**  
27 **Against all Defendants, and Each)**

1           28. McGucken repeats, re-alleges, and incorporates herein by reference as  
2 though fully set forth, the allegations contained in the preceding paragraphs of this  
3 Complaint.

4           29. McGucken regularly published the Subject Photograph with copyright  
5 management information (“CMI”), as that phrase is used in 17 USC § 1202.  
6 McGucken’s CMI included, without limitation, his name, company name, copyright  
7 notice, metadata, and other identifying information. The CMI was prominently  
8 displayed and would be viewed by visitors to McGucken’s website and online  
9 profiles.

10           30. On information and belief, McGucken alleges that Defendants, and each  
11 of them, intentionally removed and altered McGucken’s violated 17 U.S.C. §1202(b)  
12 before copying, reproducing, distributing, and displaying the Subject Photograph.

13           31. On information and belief, McGucken alleges that Defendants, and each  
14 of them, did distribute or import for distribution copyright management information  
15 knowing that the CMI has been removed or altered without authority of McGucken  
16 or the law.

17           32. On information and belief, McGucken alleges that Defendants, and each  
18 of them, did distribute and publicly display works and copies of works knowing that  
19 copyright management information has been removed or altered without authority of  
20 McGucken or the law, knowing, or, with respect to civil remedies under 17 USC §  
21 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or  
22 conceal an infringement of any right under this title.

23           33. On information and belief, McGucken alleges that Defendants, and each  
24 of them, in violation of 17 § USC 1202(a), knowingly and with the intent to induce,  
25 enable, facilitate, or conceal infringement provided false copyright management  
26 information when they added their own logos, names, bylines, and attribution to the  
27 Subject Photograph.

1           34. On information and belief, McGucken alleges that Defendants, and each  
2 of them knew, that they were providing false copyright management information to  
3 its copies of the Subject Photograph and distributing copyright management  
4 information that was false at the time it distributed its unauthorized copies of the  
5 Subject Photograph

6           35. The above conduct is in violation of the Digital Millennium Copyright  
7 Act and exposes Defendants, and each of them, to additional and enhanced common  
8 law and statutory damages, attorneys' fees, and penalties pursuant to 17 USC § 1203  
9 and other applicable law.

10           36. On information and belief, McGucken alleges that Defendants, and each  
11 of their, conduct as alleged herein was willful, reckless, and/or with knowledge, and  
12 McGucken resultantly seeks enhanced damage and penalties.

13                           **PRAYER FOR RELIEF**

14           Wherefore, Plaintiff prays for judgment as follows:

15           **Against all Defendants, and Each with Respect to Each Claim for Relief:**

- 16           a. That Defendants, and each of them, as well as their employees, agents,  
17 or anyone acting in concert with them, be enjoined from infringing  
18 McGucken's copyrights in the Subject Photograph, including without  
19 limitation an order requiring Defendants, and each of them, to remove  
20 any content incorporating, in whole or in part, the Subject Photograph  
21 from any print, web, or other publication owned, operated, or controlled  
22 by any Defendant.
- 23           b. That McGucken be awarded all profits of Defendants, and each of them,  
24 plus all losses of McGucken, plus any other monetary advantage gained  
25 by the Defendants, and each of them, through their infringement, the  
26 exact sum to be proven at the time of trial, and, to the extent available,  
27  
28



1 statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C.  
2 §1203, and other applicable law.

- 3 c. That a constructive trust be entered over any revenues or other proceeds  
4 realized by Defendants, and each of them, through their infringement of  
5 McGucken's intellectual property rights;
- 6 d. That McGucken be awarded his attorneys' fees as available under the  
7 Copyright Act U.S.C. § 505 et seq.;
- 8 e. That McGucken be awarded his costs and fees under the above statutes;
- 9 f. That McGucken be awarded statutory and enhanced damages under the  
10 statutes set forth above;
- 11 g. That McGucken be awarded pre-judgment interest as allowed by law;
- 12 h. That McGucken be awarded the costs of this action; and
- 13 i. That McGucken be awarded such further legal and equitable relief as the  
14 Court deems proper.

15 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.  
16 38 and the 7<sup>th</sup> Amendment to the United States Constitution.

17 Respectfully submitted,

18  
19 Dated: April 28, 2022

DONIGER / BURROUGHS

20 By: /s/ Scott Alan Burroughs  
21 Scott Alan Burroughs, Esq.  
22 Trevor W. Barrett, Esq.  
23 Frank R. Trechsel, Esq.  
24 *Attorneys for Plaintiff*  
25  
26  
27  
28

**Exhibit A**

**Subject Photograph**



**Exhibit B**

**Infringing Use**

**Infringing Use URL:**

<https://community.pepperdine.edu/law/academics/content/orange-book-2021.pdf>

